

**From:** Strauss, Alexis  
**Sent:** Thursday, March 19, 2015 1:48 PM  
**To:** Evans, David  
**Subject:** EPA takes hot-button salt pond case away from Army Corps

Confused and outraged...read on!

*Lead Story in E&E News PM*

## **WATER POLICY: EPA takes hot-button salt pond case away from Army Corps**

Annie Snider and Debra Kahn, E&E reporters - Published: Thursday, March 19, 2015

U.S. EPA has taken charge of determining whether industrial salt ponds in southern San Francisco Bay fall under the Clean Water Act's reach, a rare case of the agency taking the jurisdictional call away from the Army Corps of Engineers.

EPA Region 9 Administrator Jared Blumenfeld told the corps' San Francisco District and salt pond developers yesterday that EPA headquarters had approved his "special case" request to take over the jurisdiction determination for the Redwood City, Calif., property.

The salt ponds' owner, Cargill Inc., and developer DMB Pacific Ventures have proposed a mixed-use development for the tract.

Environmental groups and the developers have battled over the property for years. Much of southern San Francisco Bay's tidal wetlands were filled in and converted to industrial salt-making facilities starting in the mid-1800s. Since the 1970s, conservationists have been working to acquire and restore the salt-making sites.

Whether the Cargill salt ponds are protected under the Clean Water Act is one of the key factors that will determine how lucrative the Silicon Valley site is for developers (Greenwire, March 12).

If the ponds are considered jurisdictional, the developers would need a permit from the Army Corps to fill them in. The terms of the permit could require them to shrink or redesign their plans to minimize environmental harm and pay to repair damaged streams and wetlands elsewhere to offset damage at the site -- changes that could fundamentally alter the profitability of the project.

Cargill and the corps have argued since the passage of the Clean Water Act over whether the region's salt ponds fall under its jurisdiction, and at least 18 lawsuits have been filed over the issue.

But the Redwood City case acquired potentially wide-reaching implications when the corps' top lawyer issued a controversial legal opinion last year stating that liquids in the site's ponds did not qualify as "water" under the Clean Water Act and thus were not jurisdictional.

This is only the 11th time since passage of the Clean Water Act that EPA has taken over a jurisdictional determination.

One of the most recent, highest-profile instances was in 2008, when the George W. Bush administration's EPA took over a determination related to the Los Angeles River, deciding whether streams and wetlands within its 830-square-mile watershed could fall under the Clean Water Act's protections.

The salt pond decision follows pressure from California House Democrats as well as Sen. Diane Feinstein (D-Calif.), asking that EPA be deeply involved in the case.

Environmentalists today cheered EPA's move as a signal that it would likely lead to a reversal of the corps' legal opinion and rule the ponds jurisdictional.

"A 'special case' is very unusual, so I think it's clear to me, EPA wouldn't do that unless they disagreed with the corps' conclusion," said David Lewis, executive director of the nonprofit Save the Bay. "EPA is right to protect the bay against Cargill's -- I guess I'd call it a rogue effort -- to gut the Clean Water Act and avoid federal jurisdiction."

But the developer blasted the decision as a last-minute move dragging out what has already been a three-year process of the agencies trying to come to a decision on the site.

"We're absolutely confused and frankly outraged," said David Smith, senior vice president for DMB Redwood City Saltworks. EPA, he said, has "had the corps' legal analysis for a year now and has done nothing to help bring this matter to resolution, and now only at the 11th hour and 59th minute when what's supposed to be a 60-day process but has gone on for three years is about to resolve, they seize control? We don't understand it."

The move comes at a moment of intense political controversy over the reach of the Clean Water Act. EPA and the Army Corps of Engineers are working to finalize a contentious regulatory proposal that would increase the number of streams and wetlands that receive automatic protection under the law following two muddled Supreme Court decisions. A variety of industries and congressional Republicans have staunchly opposed the regulation and are attempting to block it legislatively.

Smith said that his case should underscore the "grave concerns" industries and some states have expressed about the regulatory proposal. "We wanted a conclusion," he said. "The corps is finally prepared to bring this to conclusion, so what are we to believe now that EPA is stepping in to thwart its being brought to conclusion?"